PATENT
Attorney Docket No. 5725.0830

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	
Véronique DOUIN et al.	Group Art Unit: 1617
Application No.: 09/765,675	Examiner: G. Yu
Filed: January 22, 2001	Confirmation No.: 6349
For: NANOEMULSIONS COMPRISING AT LEAST ONE AMPHIPHILIC LIPID, AT LEAST ONE OIL, AND AT LEAST ONE CATIONIC POLYMER, AND USES THEREOF	

Attention: Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
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Sir:

APPEAL BRIEF UNDER BOARD RULE § 41.37

In support of the Notice of Appeal filed January 13, 2006, and further to Board Rule 41.37, and to the Notice of Panel Decision form Pre-Appeal Brief Review dated February 17, 2006, Appellant presents this brief and enclose herewith a check for the fee of $500.00 required under 37 C.F.R. § 1.17(c). This Appeal Brief is being filed concurrently with a petition for an Extension of Time for five months, and the appropriate fee.

This Appeal responds to the July 13, 2005, final rejection of claims 1-62 and 64-83.

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If any additional fees are required or if the enclosed payment is insufficient, Appellant requests that the required fees be charged to Deposit Account No. 06-0916.

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I. Real Party In Interest

L'Oréal is the assignee of record as indicated by the assignment to L'Oréal, which was recorded in the U.S. Patent and Trademark Office on May 2, 2001, at Reel 011759, Frame 0451. Thus, L'Oréal is the real party in interest.

II. Related Appeals and Interferences

There are currently no other appeals or interferences, of which Appellants, Appellants' legal representative, or assignee are aware, that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status Of Claims

Claims 1-62 and 64-83 are pending in this application. All of these claims have been rejected under 35 U.S.C. § 103(a), in distinct rejections, per the following four groups. Appellants appeal the rejection of those claims.

A. Claims 1-19, 21-23, 28-62, and 68-83 stand rejected under 35 U.S.C. § 103(a).

B. Claims 24-27 stand rejected under 35 U.S.C. § 103(a).

C. Claim 20 stands rejected under 35 U.S.C. § 103(a).

D. Claims 64-67 stand rejected under 35 U.S.C. § 103(a)

Further to 37 C.F.R. § 41.37(c)(1)(iii) and (viii), the attached appendix contains a clean copy of the claims.

IV. Status Of Amendments

No claims have been amended in response to or subsequent to the final Office Action dated July 13, 2005.

V. Summary Of Claimed Subject Matter

The present invention relates to novel and unobvious oil-in-water nanoemulsions comprising oil globules with an average size of less than 150 nm comprising at least one oil, at least one amphiphilic lipid, and at least one cationic polymer comprising at least one hydrophobic block and at least one hydrophilic block, wherein the nanoemulsion has a turbidity ranging from 60 NTU to 600 NTU. *See, e.g.,* claim 1 *et. seq.*

Yet another embodiment is directed to the previously described oil-in-water nanoemulsion in which the cationic polymer is replaced with a nonionic polymer comprising at least one hydrophobic block and at least one hydrophilic block. *See, e.g.,* claim 78 *et. seq.*

Another embodiment of the present invention is directed to an oil-in-water nanoemulsion comprising oil globules with an average size of less than 150 nm comprising at least one oil, at least one amphiphilic lipid, at least one cationic polymer comprising at least one hydrophobic block and at least one hydrophilic block, and at least one aminosilicone. *See, e.g.,* claim 64 *et. seq.*

Other embodiments include compositions comprising the nanoemulsion, such as compositions for caring, washing, and/or making up a keratin material, and cosmetic make-up-removing compositions for a keratin material comprising the nanoemulsion. Other embodiments include non-therapeutic care processes for a keratin material comprising applying the nanoemulsion, processes for thickening oil-in-water emulsions. *See, e.g.,* claims 68-77.

As discussed in the specification at page 1, the use of oil-in-water emulsions are known in the field of cosmetics and in the field of dermopharmacy, for example, for the preparation of cosmetic products. In particular, nanoemulsions comprising amphiliphilic lipids are known. Disadvantages with the nanoemulsions of the prior art comprising nanoemulsions are experienced, however, in that they are fluid. As discussed at page 3 of the specification, thickeners for aqueous media are also known. However, when certain polymeric thickeners are used in nanoemulsion-containing compositions, the resulting compositions may tend to exhibit problems in properties including stability and transparency, for example. At the time the present invention was filed, therefore, thickening systems which could conveniently thicken, or even gel, a composition in the form of an oil-in-water nanoemulsion with minimal influence on the cosmetic properties of the composition were desired.

Appellants have discovered that oil-in-water nanoemulsions comprising oil globules with an average size of less than 150 nm comprising at least one oil and at least one amphiphilic lipid can be thickened with at least one cationic polymer. The cationic polymer can be chosen from water-soluble and water dispersible cationic polymers, comprising at least one hydrophobic block and at least one hydrophilic block.

According to the present invention, the presence of such polymers comprising at least one hydrophobic block and at least one hydrophilic block in an oil-in-water nanoemulsion may improve the thickening, the transparency, and the stability of compositions comprising the inventive nanoemulsions on storage. For example, Appellants have demonstrated that the thickening, the transparency, and the stability of a nanoemulsion comprising at least cationic polymer comprising at least one

hydrophobic block and at least one hydrophilic block (Quatrisoft LM 200), at least one oil, and at least one amphiphilic lipid is greater than that of a nanoemulsion in which the at least cationic polymer comprising at least one hydrophobic block and at least one hydrophilic block is replaced with the same amount of Carbopol Ultrez, a crosslinked acrylic acid homopolymer. *See* Example 1 at pages 49-51. Accordingly, Appellants have shown the unpredictability of adding polymers to a nanoemulsion on its thickening, transparency, and stability.

VI. Grounds of Rejection

A. Claims 1-19, 21-23, 28-62, and 68-83 stand rejected under 35 U.S.C. § 103(a) over European Patent No. 0 842 652 A1 to *Restle et al.* ("*Restle*") in view of U.S. Patent No. 5,135,748 to *Ziegler et al.* ("*Ziegler*"), U.S. Patent No. 6,533,873 to *Margosiak et al.* ("*Margosiak*"), and "POUCHER'S PERFUMES, COSMETICS, AND SOAPS: EMULSION THEORY" by *Knowlton, J.L.* ("*Knowlton*").

B. Claims 24-27 stand rejected under 35 U.S.C. § 103(a) over *Restle*, in view of *Ziegler*, *Margosiak*, and *Knowlton* as applied to claims 1-19, 21-23, 28-62, and 68-83 above, and further in view of European Patent No. 0 780 114 to *Simonnet* ("*Simonnet*").

C. Claim 20 stands rejected under 35 U.S.C. § 103(a) over *Restle* in view of *Ziegler*, *Margosiak*, and *Knowlton*, further in view of *Simonnet*, as applied to claims 1-19, 21-62, and 68-83 above, and further in view of U.S. Patent No. 5,716,418 to *Matzik et al.* ("*Matzik*").

D. Claims 64-67 stand rejected under 35 U.S.C. § 103(a) over *Restle* in view of *Ziegler*, *Margosiak*, and *Knowlton*, further in view of *Simonnet*, further in view of *Matzik*, as applied to claims 1-62 and 68-83 above, and further in view of JP 10-338899 to *Decoster et al.* ("*Decoster*").

VII. Argument

Each claim of this patent application is separately patentable, and upon issuance of a patent will be entitled to a separate presumption of validity under 35 U.S.C. § 282. The arguments set forth below are arranged under separate subheadings, and in accordance with 37 C.F.R. § 41.37(c)(1)(vii) these subheadings indicate the claims that are argued separately.

A. Factual Inquiries to Determine Obviousness

Several basic factual inquires must be made in order to determine the obviousness or non-obviousness of claims of a patent application under 35 U.S.C. § 103. These factual inquiries, set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 U.S.P.Q. 459, 467 (1966), require the Examiner to:

(1) Determine the scope and content of the prior art;
(2) Ascertain the differences between the prior art and the claims in issue;
(3) Resolve the level of ordinary skill in the pertinent art; and
(4) Evaluate evidence of secondary considerations.

The obviousness or nonobviousness of the claimed invention is then evaluated in view of the results of these inquiries. *Graham*, 383 U.S. at 17-18. In making this evaluation, the references must be considered as a whole, and must suggest the desirability and thus the obviousness of making the combination. *See* M.P.E.P. § 2141. The references must also be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention. *Id.* Additionally, a reasonable expectation of success is the standard with which obviousness is determined. *Id.* Furthermore, the Examiner bears the initial burden of factually supporting a determination of obviousness in the rejection of the claimed invention. *See* M.P.E.P. § 2142.

Thus, in order to carry the initial burden of establishing a *prima facie* case of obviousness that satisfies the *Graham* standard, the Examiner must show (1) that there exists some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings, (2) that there is a reasonable expectation of success, and (3) that all claim elements are disclosed by the prior art references. *See* M.P.E.P. § 2143. For the reasons set forth below, the Examiner has failed to meet the burden of establishing a prima facie case of obviousness.

B. The Examiner is Using a Legally Incorrect Standard for Determining Obviousness

In the Advisory Action mailed December 14, 2005, the Examiner, allegedly relying on M.P.E.P. § 2142, asserts that:

> The outstanding obviousness rejection is not based on the ground that the skilled artisan would have "modified" the Restle composition in some way; rather, a skilled [sic] in the art would have had "combined" the teachings of the prior arts to achieve the claimed invention, as the claimed invention is viewed so closely identical to the prior art.

See page 2 of the Advisory Action mailed December 14, 2005.

Contrary to the Examiner's assertion, the fact that prior art references can be "viewed so closely identical to the prior art" is not sufficient grounds for concluding that the present invention is obvious over the prior art. To establish a prima facie case of obviousness, *all the claim limitations must be taught or suggested by the prior art.* M.P.E.P. § 2143.03; *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). While references must be analogous prior art for the purpose of analyzing subject

matter, the fact that the references are analogous prior art is not sufficient by itself to establish a prima facie case of obviousness. *See In re Oetiker*, 977 F.2d 1443, 1446, 24 U.S.P.Q.2d 1443, 1445 (Fed. Cir. 1992); *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990) ("The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination."). Similarly, the fact that individual aspects of the claimed invention are individually known in the art is not sufficient to establish a prima facie case of obviousness without some reason to combine the teachings of the prior art. *In re Kotzab*, 217 F.3d 1365, 1371, 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000).

In the present case, as discussed below, the Examiner has failed to demonstrate a prima facie case of obviousness.

C. The Examiner has not Established that the Proposed Modifications Would have been Obvious

As stated, a prima facie case of unpatentability requires that that there exists some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings.

In the present case, there would not have been the requisite motivation to modify the compositions disclosed in the prior art references in a manner necessary to arrive at the presently claimed nanoemulsion. Rather, the Examiner merely identified claim elements in the prior art, which in itself, is not sufficient to establish a prima facie case of obviousness. The suggestion, or motivation to modify or combine must be "clear and particular." See *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). When a claimed

invention combines two or more known elements, a patentability determination rests on "whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination." *In re Beattie*, 24 U.S.P.Q.2d 1040, 1042 (Fed. Cir. 1992) (internal citations omitted).

D. The Rejections

1. Claims 1-19, 21-23, 28-62, and 68-83

Claims 1-19, 21-23, 28-62, and 68-83 are rejected under 35 U.S.C. § 103(a) as unpatentable over *Restle* in view of *Ziegler*, *Margosiak*, and *Knowlton*. Office Action mailed July 13, 2005 at 2. The Examiner maintained the rejection for the reasons of record. *See, e.g.,* the Office Action mailed December 23, 2004 at pages 3-5.

Independent claims 1, 68-73, 75, 77, and 78 recite the common feature of a nanoemulsion comprising: (1) oil globules with an average size of less than 150 nm comprising at least one oil and (2) at least one amphiphilic lipid, wherein (3) the nanoemulsion has a turbidity ranging from 60 NTU to 600 NTU. The nanoemulsion also comprises either (4a) at least one cationic polymer comprising at least one hydrophobic block and at least one hydrophilic block, such as in claim 1 or (4b) at least one nonionic polymer comprising at least one hydrophobic block and at least one hydrophilic block, such as in claim 78.

The Examiner acknowledges that *Restle* and *Ziegler* fail to teach the nanoemulsion having the claimed turbidity. *Id.* at page 4. The Examiner, however, asserts that "[i]t would have been obvious to one of ordinary skill in the art that the Restle nanoemulsion whose average particle size of oil globules smaller than 150 nm is

translucent to transparent, as suggested by Knowlton, and has a turbidity at or below 150 NTU, as suggested by Margosiak." *Id.* at page 5. In the final Office Action mailed July 13, 2005, the Examiner refutes that the above assertion is based on inherency theory and further asserts that it was the "intent" of *Knowlton* to suggest that "the particle size is a significant factor in determining the appearance of an emulsion." Office Action mailed July 13, 2005 at page 3.

Appellants respectfully disagree with this assertion and believe that the present claims are patentable for at least the following reasons.

a. Turbidity is Not an Inherent Property

Despite using the word "intent," the Examiner's rejection is clearly a de-facto inherency argument since it is based on the premise that the prior art would exhibit the claimed turbidity property, even though it admittedly does not teach such a property. The rejection fails to meet the high burden of inherency since it is supported, at best, by evidence showing that a certain result or characteristic **may** occur or be present in the prior art, which "is not sufficient to establish the inherency of that result or characteristic." M.P.E.P. § 2112. Rather, "to establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' " *In re Robertson*, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted) (emphasis added). The Examiner has failed to meet this burden.

Despite the Examiner's assertions regarding the teachings of *Knowlton* and *Margosiak*, neither of these references provides the necessary teachings to support an inherency rejection. In fact, instead of providing extrinsic evidence that makes clear that the "missing subject matter is necessarily present in the thing described in the reference," *Knowlton* clearly teaches why the missing subject matter is merely a possibility.

For example, the Examiner relies upon *Knowlton* as teaching that "when particle size falls below 0.1 microns (100 nm) the emulsions appear blue-gray to translucent, to transparent." Office Action mailed December 23, 2004 at page 4. *Knowlton*, however, also clearly states that "it is foolish to generalize on the correlation of emulsion appearance with the size of the dispersed phase particles." *Knowlton* at 552 (emphasis added). Therefore, *Knowlton* cannot support a rejection based on inherency because Knowlton clearly teaches that the claimed property is a mere possibility. Such a teaching is far from the requisite evidence necessary to show that the missing subject matter is necessarily present.

Margosiak similarly fails to provide the extrinsic evidence necessary to show that the nanoemulsion of *Restle* would have the claimed turbidity. The Examiner relies on the combination of *Knowlton* and *Margosiak* as stepping stones to reconstruct Appellants' invention, which is fundamentally improper under section 103. Indeed, the Federal Circuit has repeatedly warned that the requisite motivation must come from the prior art, not applicant's specification. *In re Dow Chem. Co.*, 837 F.2d 469, 473, 5 U.S.P.Q.2d 1529, 1531-1532 (Fed. Cir. 1988) ("[t]here must be a reason or suggestion in the art for selecting the procedure used, other than the knowledge learned

from the applicant's disclosure."). Using an applicant's disclosure as a blueprint to reconstruct the claimed invention from isolated pieces of the prior art contravenes the statutory mandate of section 103 of judging obviousness at the point in time when the invention was made. *See Grain Processing Corp. v. American Maize-Prods. Co.*, 840 F.2d 902, 907, 5 U.S.P.Q.2d 1788, 1792 (Fed. Cir. 1988).

The Examiner asserts that the teachings of *Knowlton* shows that emulsions having a particle size of around 100 nm are blue-gray to translucent, to transparent in appearance. *See* Office Action mailed December 23, 2004 at pages 4-5. Then, the Examiner asserts that a gel formulation having a clear appearance has a turbidity less than or equal to 105 NTU, based on the teaching of *Margosiak*. *See id.* Appellants respectfully disagree with this assertion for at least the following reasons.

As explained above, the Examiner inappropriately relies on *Knowlton* as teaching the correlation between appearance and size. *Knowlton* clearly acknowledges that it is "foolish" to make such generalizations. While *Margosiak* does disclose a clear composition having a turbidity less than or equal to 105 NTU, *Margosiak* does not teach the size of the particles within the composition. The Examiner has provided no scientific or logical reasoning why such a composition necessarily has a turbidity less than 105 NTU. According to the Examiner's assertion, any nanoemulsion having an oil globule size of less than 150 nm would have a transparent appearance and a turbidity of less than 105 NTU. This assertion lacks any factual or scientific basis. In fact, the Example of the present specification clearly shows the fallacy in the Examiner's position.

The Example of the present specification discloses a nanoemulsion having a oil globule size of 63 nm. Specification at page 50, line 16. The nanoemulsion has a

turbidity of 375 NTU. *Id.* at page 50, line 18. The present specification also discloses that the nanoemulsions according to the present invention have a transparent to blueish appearance. *Id.* at page 44, lines 20-21. This Example proves that it is indeed "foolish" to generalize on the correlation between emulsion appearance, globule size, and turbidity. Thus, the Examiner's assertion that all nanoemulsions having oil globule sizes less than 150 nm have a turbidity less than 105 NTU is simply untrue and evidences the lack of scientific or factual basis necessary to establish inherency or a prima facie case of obviousness.

Finally, *Restle* is silent as to the appearance of the composition, and any assertions to the contrary are based purely on the Examiner's improper conjecture. In fact, the Board has already determined in the prior appeal of the present application that "Restle and Ziegler do not discuss the transparency or turbidity of the disclosed compositions and therefore would not have led those skilled in the art to expect that the composition resulting from their combination would have the recited property." *See* Decision on Appeal mailed August 26, 2004 at page 16.

Therefore, based on the uncertainty between particle size and appearance, *Knowlton* is incapable of providing clear evidence that the emulsion of *Restle* necessarily has a translucent appearance based on the size of the particles. Furthermore, *Margosiak* cannot cure the deficiencies of *Knowlton* because *Margosiak* does not disclose the size of the particles in the composition.

For these reasons, the rejection of claims 1-19, 21-23, 28-62, and 68-83 under 35 U.S.C. § 103(a) as unpatentable over *Restle* in view of *Ziegler*, *Margosiak*, and *Knowlton*, is improper and should be withdrawn.

b. No Motivation or Suggestion to Modify or Combine

When a claimed invention combines two or more known elements, a patentability determination rests on "whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination." *In re Beattie*, 24 U.S.P.Q.2d 1040, 1042 (Fed. Cir. 1992) (internal citations omitted). The prosecution history of this application unequivocally shows that the cited prior art does not suggest the desirability, and thus the obviousness, of making the combination applied by the Examiner. Therefore, there would not have been the requisite motivation to modify the compositions disclosed in the prior art references in a manner necessary to arrive at the presently claimed nanoemulsion.

Support for this position is found, *inter alia*, in the first Decision on Appeal in this case. In this Decision, the Board concluded that "Restle and Ziegler do not discuss the transparency or turbidity of the disclosed compositions and therefore would not have led those skilled in the art to expect that the composition resulting from their combination would have the recited property." *See* Decision on Appeal mailed August 26, 2004 at page 16. In other words, the Board has already determined that the combination of *Restle* and *Ziegler* provide neither the motivation to modify the references or to combine their teachings, nor the reasonable expectation of success if their teachings were combined.

Knowlton and *Margosiak* do not cure the deficiencies of *Restle* and *Ziegler* because *Knowlton* and *Margosiak* fail to provide any motivation or suggestion to modify or combine the teachings of the prior art. In the Advisory Action mailed December 14, 2005, the Examiner asserts that one skilled in the art "would have had 'combined' the

teachings of the prior arts to achieve the claimed invention, as the claimed invention is viewed so closely identical to the prior art." Advisory Action at page 2.

As explained above, the fact that the claimed invention is "closely identical" to the prior art is not sufficient to establish a prima facie case of obviousness. *Knowlton* states that "it is foolish to generalize on the correlation of emulsion appearance with the size of the dispersed phase particles." *Knowlton* at 552. *Margosiak* teaches a different emulsion having a transparent appearance and a turbidity of less than 105 NTU, but fails to disclose the size of the globules. *Margosiak* at col. 10, lines 20-29. Neither reference teaches the desirability of making the composition of *Restle* transparent. Taking into account the full disclosures of the references, it is noted that *Ziegler* actually teaches that opacifiers and colorants may be added to the composition. *See Ziegler* at col. 8, lines 61-64. The references would not have motivated or suggested to one skilled in the art to modify or combine the teachings of the prior art to achieve the claimed invention.

For at least the foregoing reasons, Appellants submit that the combination of *Restle*, *Zeigler*, *Knowlton*, and *Margosiak* do not render obvious the invention of independent claims 1, 68-73, 75, 77, and 78, and the claims dependent thereon. In particular, the Examiner has not shown (1) that there exists some suggestion or motivation to modify the references or to combine reference teachings, (2) that there is a reasonable expectation of success, and (3) that all claim elements are disclosed by the prior art references. As the rejection does not meet any of these requirements, and certainly not all three, as required by M.P.E.P. § 2143, the rejection is improper and should be withdrawn.

2. Claims 24-27

Claims 24-27 are rejected under 35 U.S.C. § 103(a) as unpatentable over *Restle*, *Ziegler*, *Margosiak*, and *Knowlton*, and further in view of *Simonnet*. Office Action mailed July 13, 2005 at page 2. The Examiner maintained the rejection for the reasons of record set forth in the Office Action mailed December 23, 2004 at page 5-6.

Claims 24-27 recite the common feature of a nanoemulsion comprising: (1) oil globules with an average size of less than 150 nm comprising at least one oil, (2) at least one amphiphilic lipid, (3) at least one cationic polymer comprising at least one hydrophobic block and at least one hydrophilic block, and (4) at least one ionic lipid as recited in claims 24-27, wherein (5) the nanoemulsion has a turbidity ranging from 60 NTU to 600 NTU.

The Examiner acknowledges that *Restle*, *Ziegler*, *Margosiak*, and *Knowlton* fail to teach the amphiphilic anionic lipids claimed by the Appellants. *See id.* at page 5. The Examiner therefore relies on *Simonnet* to teach the amphiphilic anionic lipids. *Simonnet*, however, does not remedy the deficiencies of the combined disclosures of *Restle*, *Ziegler*, *Knowlton* and *Margosiak* with respect to claims 24-27. *Simonnet* neither teaches nor suggests a nanoemulsion having a turbidity ranging from 60 NTU to 600 NTU as recited in the present independent claims.

The rejection is improper since the Examiner has not met any and definitely not all three of the requirements outlined in M.P.E.P. § 2143. In particular, she has not shown (1) that there exists some suggestion or motivation to modify the references or to combine reference teachings, (2) that there is a reasonable expectation of success, and

(3) that all claim elements are disclosed by the prior art references. Appellants thus respectfully request that this rejection over claims 24-27 be withdrawn.

3. Claim 20

Claim 20 is rejected under 35 U.S.C. § 103(a) as unpatentable over *Restle*, *Ziegler*, *Margosiak*, *Knowlton*, and *Simonnet*, and further in view of *Matzik*. Office Action mailed July 13, 2005 at page 2. The Examiner maintained the rejection for the reasons of record set forth in the Office Action mailed December 23, 2004 at page 6.

Claim 20 is drawn to a nanoemulsion comprising: (1) oil globules with an average size of less than 150 nm comprising at least one oil, (2) at least one amphiphilic lipid, (3) at least one cationic polymer comprising at least one hydrophobic block and at least one hydrophilic block, wherein said at least one amphiphilic lipid is chosen from nonionic amphiphilic lipids and anionic amphiphilic lipids, wherein said anionic amphiphilic lipids are chosen from alkyl ether citrates, alkoxylated alkenyl succinates, alkoxylated glucose alkenyl succinates, and alkoxylated methylglucose alkenyl succinates, wherein (4) the nanoemulsion has a turbidity ranging from 60 NTU to 600 NTU.

The Examiner acknowledges that *Restle*, *Ziegler*, *Margosiak*, *Knowlton*, and *Simonnet* fail to teach the anionic amphiphilic lipids claimed by the Applicants. *See id.* at page 5. The Examiner therefore relies on *Matzik* to teach the amphiphilic anionic lipids. *Matzik*, however, does not remedy the deficiencies of the combined disclosures of *Restle*, *Ziegler*, *Knowlton*, *Margosiak*, and *Simonnet* with respect to claims 24-27. *Matzik* neither teaches nor suggests a nanoemulsion having a turbidity ranging from 60 NTU to 600 NTU as recited in the present independent claims.

For substantially the same reasons discussed above, the rejection is improper since the Examiner has not met any and definitely not all three of the requirements outlined in M.P.E.P. § 2143, including the fact that this combination of references teach all the claimed elements. *See In re Royka*. Appellants thus respectfully request that this rejection over claim 20 be withdrawn.

4. Claims 64-67

Claims 64-67 are rejected under 35 U.S.C. § 103(a) as unpatentable over *Restle*, *Ziegler*, *Margosiak*, *Knowlton*, *Simonnet*, and *Matzik*, and further in view of *Decoster*. Office Action mailed July 13, 2005 at page 2. The Examiner maintained the rejection for the reasons of record set forth in the Office Action mailed December 23, 2004 at pages 6-8.

The claims in this group recite the common feature of an oil-in-water nanoemulsion comprising: (1) oil globules with an average size of less than 150 nm comprising at least one oil, (2) at least one amphiphilic lipid, (3) at least one cationic polymer comprising at least one hydrophobic block and at least one hydrophilic block, and (4) at least one aminosilicone.

The Examiner acknowledges that the combination of *Restle*, *Ziegler*, *Margosiak*, *Knowlton*, *Simonnet*, and *Matzik* fails to teach the use of aminosilicone, as recited in the present claims. The Examiner alleges that it would have been obvious to one skilled in the art to combine the teachings of *Decoster* with the combination of *Restle*, *Ziegler*, *Margosiak*, *Knowlton*, *Simonnet*, and *Matzik* for the reasons stated on page 7, second full paragraph of the December 23, 2004 Office Action.

Furthermore, the Examiner alleges that there would have been a reasonable expectation of successfully producing a nanoemulsion hair shampoo or body wash composition with improved or similar conditioning benefits because *Restle* teaches the applicability of emulsions in shampoo or skin cleansing formulations, *Decoster* teaches the applicability of the conditioning system in detergent compositions, and both references teach using quaternary ammonium cationic polymers. *See id.* at pages 7-8.

Contrary to the Examiner's assertions, the Office has not met this burden for at least the reasons that there is no motivation to combine the reference teachings, there is no reasonable expectation of success, and the combination of references do not teach all of the claim limitations. For example, similar to the other secondary references described above, *Decoster* does not remedy the deficiencies of the primary reference. Indeed, the Examiner merely cites this reference for its alleged teachings related to aminosilicone, including the benefits associated with its use.

Central to the Examiner's rejection is the alleged conditioning benefit of *Decoster*. As disclosed by *Decoster*, however, this benefit, can only be achieved "in a case where (A): A specified detergent base and (B): A conditioning system inclusive of at least one cationic polymer and at least one aminosilicone are used together." *See Decoster* at 12. The specified detergent base of *Decoster* requires "at least one sulfuric acid alkyl ether-type anionic surfactant and at least one $C_8 \sim C_{20}$ alkylbetaine-type amphoteric surfactant." *Decoster* at 12.

During prosecution, the Examiner attempted to refute this argument by stating that "[e]ven if the conditioning benefits of the *Decoster* composition were obtained only in the detergent base as described in that reference, the claimed invention in instant

claims 64-68 does not exclude the presence of the detergent base in the claimed composition." Office Action mailed July 13, 2005 at page 5. There is, however, no suggestion or motivation to add the entire conditioning system and detergent base of *Decoster* in the composition allegedly disclosed by *Restle*, *Ziegler*, *Knowlton*, *Margosiak*, *Simonnet*, and *Matzik*.

In fact, *Restle* requires, *inter alia*, an oil-in-water emulsion whose oil globules have an average size that is smaller than 150 nm and that includes an amphiphilic lipid phase having nonionic lipids and cationic lipids. *See Restle* at 2. One skilled in the art would not have been motivated to combine the aminosilicone of *Decoster* with the combined composition of *Restle*, *Ziegler*, *Knowlton*, *Margosiak*, *Simonnet*, and *Matzik* because *Decoster* clearly requires a specified base detergent in combination with the conditioning system to achieve a conditioning benefits.

To establish a prima facie case of obviousness, one skilled in the art must have a reasonable expectation of success. *See In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). The Examiner asserts that it would have been obvious to modify the composition of the combined references to use the complete conditioning system of *Decoster*, along with the requisite detergent base, because the present claims do not exclude the presence of the detergent base. *See* Office Action mailed July 13, 2005 at 5. *Restle*, however, teaches that "the compositions . . . may be used for washing, cleaning and removing makeup from keratinic materials such as hair, skin, eyelashes, eyebrows, nails, and mucous membranes." *Restle* at 20.

Because *Restle* already discloses a composition for washing, cleaning and removing makeup, one skilled in the art would not have been motivated to add the

complete conditioning system and detergent base of *Decoster* because there is no teaching or suggestion to make the alleged combination. Furthermore, one skilled in the art would not have had a reasonable expectation of success in combining two different compositions as taught by *Restle* and *Decoster* because the references disclose different systems and components for achieving the desired effects. Therefore, the Office has not met the burden of establishing a prima facie case of obviousness.

For substantially the same reasons discussed above, the rejection is improper since the Examiner has not met any and definitely not all three of the requirements outlined in M.P.E.P. § 2143. Appellants thus respectfully request that this rejection over claims 64-67 be withdrawn.

VIII. Conclusion

In view of the foregoing, Appellants respectfully submit that a prima facie case of obviousness has not been established, and request that the § 103(a) rejections of 1-62 and 64-83 be reversed and withdrawn.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this Appeal Brief, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: August 17, 2006

By: _____
Louis M. Troilo
Reg. No. 45,284

Claims Appendix to Appeal Brief Under Rule 41.37(c)(1)(viii)

1. (Previously Presented) An oil-in-water nanoemulsion comprising oil globules with an average size of less than 150nm comprising at least one oil, at least one amphiphilc lipid, and at least one cationic polymer comprising at least one hydrophobic block and at least one hydrophilic block, wherein said nanoemulsion has a turbidity ranging from 60 NTU to 600 NTU.

2. (Original) A nanoemulsion according to claim 1, wherein said at least one oil and said at least one amphiphilic lipid are present in amounts wherein the weight ratio of the amount of said at least one oil to the amount of said at least one amphiphilic lipid ranges from 1:1 to 10:1.

3. (Original) A nanoemulsion according to claim 2, wherein said weight ratio ranges from 1.2:1 to 6:1.

4. (Original) A nanoemulsion according to claim 1, wherein said oil globules have an average size ranging from 30 nm to 100 nm.

5. (Original) A nanoemulsion according to claim 1, wherein said at least one cationic polymer is chosen from water-soluble cationic polymers and water-dispersible cationic polymers.

6. (Original) A nanoemulsion according to claim 1, wherein said at least one cationic polymer comprises at least two hydrophobic blocks.

7. (Original) A nanoemulsion according to claim 1, wherein said at least one hydrophobic block is chosen from fatty chains comprising from 6 to 30 carbon atoms, divalent aliphatic groups, divalent cycloaliphatic groups and divalent aromatic groups.

8. (Original) A nanoemulsion according to claim 7, wherein said fatty chains comprising from 6 to 30 carbon atoms are chosen from alkyl chains, arylalkyl chains, alkylaryl chains and alkenyl chains.

9. (Original) A nanoemulsion according to claim 1, wherein said at least one hydrophilic block is chosen from polyethylene oxides, polysaccharides, polyamides, and polyesters.

10. (Original) A nanoemulsion according to claim 9, wherein said polyamides are chosen from polyacrylamides.

11. (Original) A nanoemulsion according to claim 1, wherein said at least one hydrophobic block and said at least one hydrophilic block are bonded with at least one linking group chosen from ester, ether, urea, amide and urethane linkers.

12. (Original) A nanoemulsion according to claim 1, wherein said at least one hydrophilic block and said at least one hydrophobic block are present in amounts wherein the weight ratio of the amount of said at least one hydrophilic block to the amount of said at least one hydrophobic block ranges from 10:1 to 1000:1.

13. (Original) A nanoemulsion according to claim 1, wherein said at least one cationic polymer is chosen from polyacrylates comprising at least one amine side group and quaternized cellulose derivatives.

14. (Original) A nanoemulsion according to claim 1, wherein said at least one cationic polymer is present in an amount ranging from 0.1% to 20% by weight relative to the total weight of the final composition.

15. (Original) A nanoemulsion according to claim 14, wherein said at least one cationic polymer is present in an amount ranging from 0.5% to 10% by relative to the total weight of the final composition weight.

16. (Original) A nanoemulsion according to claim 15, wherein said at least one cationic polymer is present in an amount ranging from 1% to 5% by weight relative to the total weight of the final composition.

17. (Original) A nanoemulsion according to claim 1, wherein said at least one amphiphilic lipid is chosen from nonionic amphiphilic lipids and anionic amphiphilic lipids.

18. (Original) A nanoemulsion according to claim 17, wherein said nonionic amphiphilic lipids are chosen from:

1/- silicone surfactants,

2/- nonionic amphiphilic lipids that are fluid at a temperature of less than or equal to 45°C chosen from esters formed from (i) at least one polyol chosen from polyethylene glycol comprising from 1 to 60 ethylene oxide units, sorbitan, glycerol comprising from 2 to 30 ethylene oxide units, polyglycerols comprising from 2 to 15 glycerol units, and (ii) at least one fatty acid comprising at least one alkyl chain chosen from saturated and unsaturated, linear and branched C_8-C_{22} alkyl chains,

3/- mixed esters derived from (i) at least one fatty acid, at least one carboxylic acid, and glycerol, and mixed esters derived from (ii) at least one fatty alcohol, at least one carboxylic acid, and glycerol, wherein said at least one carboxylic acid is chosen from α-hydroxy acids and succinic acid,

4/- fatty acid esters of sugars and fatty alcohol ethers of sugars,

5/- surfactants that are solid at a temperature of less than or equal to 45□C chosen from fatty esters of glycerol, fatty esters of sorbitan, oxyethylenated fatty esters of sorbitan, ethoxylated fatty ethers, and ethoxylated fatty esters, and

6/- block copolymers of ethylene oxide (A) and of propylene oxide (B).

19. (Original) A nanoemulsion according to claim 17, wherein said nonionic amphiphilic lipids are chosen from:

- polyethylene glycol isostearate (8 mol of ethylene oxide),
- diglyceryl isostearate,
- polyglyceryl monolaurate, polyglyceryl monostearate, and polyglyceryl distearate which comprise 10 glycerol units,
- sorbitan oleate, and
- sorbitan isostearate.

20. (Original) A nanoemulsion according to claim 17, wherein said anionic amphiphilic lipids are chosen from:

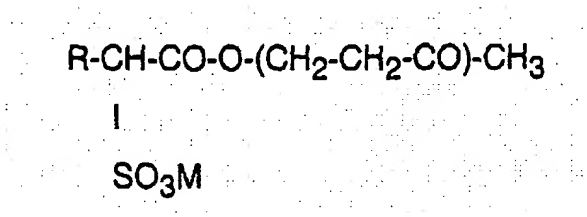
- alkyl ether citrates,
- alkoxylated alkenyl succinates,
- alkoxylated glucose alkenyl succinates, and
- alkoxylated methylglucose alkenyl succinates.

21. (Original) A nanoemulsion according to claim 1, wherein said at least one amphiphilic lipid is present in an amount ranging from 0.2% to 15% by weight relative to the total weight of the nanoemulsion.

22. (Original) A nanoemulsion according to claim 21, wherein said at least one amphiphilic lipid is present in an amount ranging from 1% to 8% by weight relative to the total weight of the nanoemulsion.

23. (Original) A nanoemulsion according to claim 1 further comprising at least one ionic amphiphilic lipid chosen from cationic amphiphilic lipids and anionic amphiphilic lipids chosen from:

- alkaline salts of dicetyl phosphate and of dimyristyl phosphate;
- alkaline salts of cholesteryl sulfate;
- alkaline salts of cholesteryl phosphate;
- lipoamino acids and salts thereof;
- sodium salts of phosphatidic acid;
- phospholipids; and
- alkylsulfonic derivatives of formula:



in which R, which may be identical or different in embodiments wherein more than one of said alkylsulfonic derivative is used, is chosen from C_{16}-C_{22} alkyl groups, and M is chosen from alkali metals and alkaline-earth metals.

24. (Original) A nanoemulsion according to claim 23, wherein said lipoamino acids and salts thereof are chosen from monosodium and disodium acylglutamates.

25. (Original) A nanoemulsion according to claim 24, wherein said lipoamino acids and salts thereof are chosen from the disodium salt of N-stearoyl-L-glutamic acid.

26. (Original) A nanoemulsion according to claim 23, wherein said R is chosen from $C_{16}H_{33}$ and $C_{18}H_{37}$ groups.

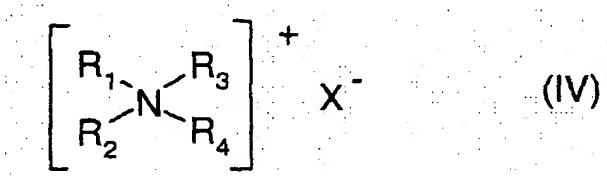
27. (Original) A nanoemulsion according to claim 23, wherein said M is sodium.

28. (Original) A nanoemulsion according to claim 23, wherein said at least one ionic amphiphilic lipid chosen from cationic amphiphilic lipids and anionic amphiphilic lipids is present in said nanoemulsion in an amount ranging from 0.01% to 10% by weight relative to the total weight of the nanoemulsion.

29. (Original) A nanoemulsion according to claim 28, wherein said at least one ionic amphiphilic lipid chosen from cationic amphiphilic lipids and anionic amphiphilic lipids is present in said nanoemulsion in an amount ranging from 0.2% to 5% by weight relative to the total weight of the nanoemulsion.

30. (Original) A nanoemulsion according to claim 23, wherein said cationic amphiphilic lipids are chosen from:

A) quaternary ammonium salts of formula (IV):



(IV)

in which:

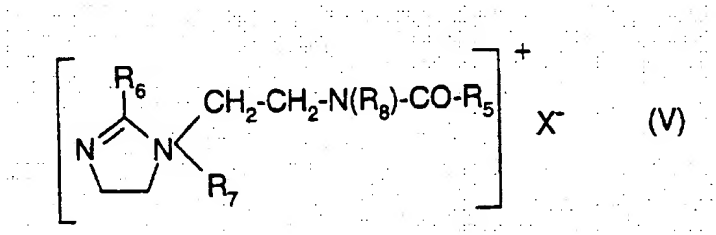
- R_1, R_2, R_3, and R_4, which may be identical or different, are each chosen from:

- linear and branched aliphatic groups comprising from 1 to 30 carbon atoms and optionally comprising atoms chosen from hetero and halogen atoms, and

- aromatic groups, and

- X^- is an anion chosen from halides, phosphates, acetates, lactates, (C_2-C_6)alkyl sulfates, alkyl sulfonates, and alkylaryl sulfonates;

B) quaternary ammonium salts of imidazolinium of formula (V):



(V)

in which:

- R_5 is chosen from alkenyl and alkyl groups comprising from 8 to 30 carbon atoms,

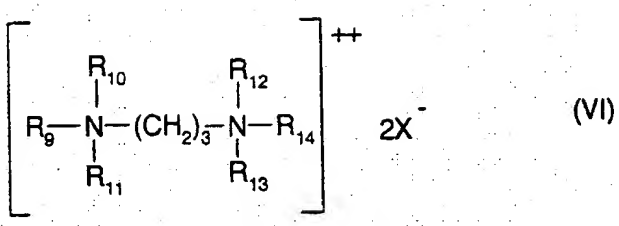
- R_6 is chosen from a hydrogen atom, C_1-C_4 alkyl groups, and alkenyl and alkyl groups comprising from 8 to 30 carbon atoms,

- R_7 is chosen from C_1-C_4 alkyl groups,

- R_8 is chosen from a hydrogen atom and C_1-C_4 alkyl groups, and

- X^- is an anion chosen from halides, phosphates, acetates, lactates, alkyl sulfates, alkyl sulfonates, and alkylaryl sulfonates;

C) diquaternary ammonium salts of formula (VI):



(VI)

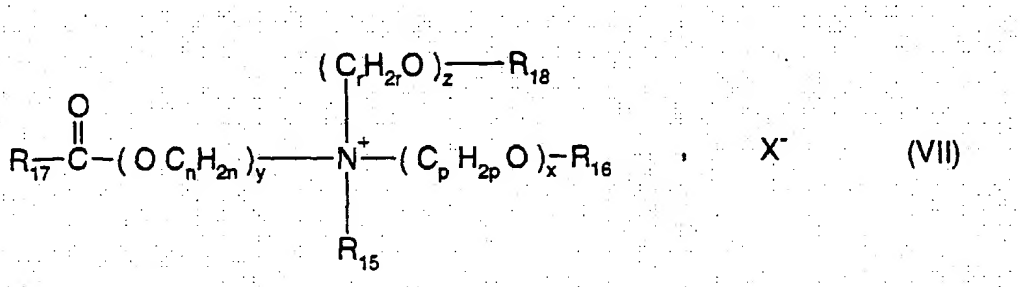
in which:

- R_9 is chosen from aliphatic groups comprising from 16 to 30 carbon atoms,

- R_{10}, R_{11}, R_{12}, R_{13} and R_{14}, which may be identical or different, are each chosen from a hydrogen atom and alkyl groups comprising from 1 to 4 carbon atoms, and

- X^- is an anion chosen from halides, acetates, phosphates, nitrates and methyl sulfates; and

D) quaternary ammonium salts comprising at least one ester function chosen from said quaternary ammonium salts of formula (VII):



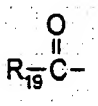
(VII)

in which:

- R_{15} is chosen from C_1-C_6 alkyl groups, C_1-C_6 hydroxyalkyl groups and C_1-C_6 dihydroxyalkyl groups;

- R_{16} is chosen from:

- acyl groups of the following formula:



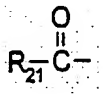
wherein R_{19} is defined below,

- linear and branched, saturated and unsaturated, C_1-C_{22} hydrocarbon-based groups, and

- a hydrogen atom;

- R_{18} is chosen from:

- acyl groups of the following formula:



wherein R_{21} is defined below,

- linear and branched, saturated and unsaturated, C_1-C_6 hydrocarbon-based groups, and

- a hydrogen atom;

- R_{17}, R_{19} and R_{21}, which may be identical or different, are each chosen from linear and branched, saturated and unsaturated, C_7-C_{21} hydrocarbon-based groups;

- n, p and r, which may be identical or different, are each chosen from integers ranging from 2 to 6;

- y is chosen from integers ranging from 1 to 10;

- x and z, which may be identical or different, are each chosen from integers ranging from 0 to 10;

- X^- is chosen from simple and complex, organic and inorganic anions; and

- provided that the sum x + y + z is from 1 to 15, and that when x is 0, then R_{16} is chosen from linear and branched, saturated and unsaturated, C_1-C_{22} hydrocarbon-based groups, and that when z is 0, then R_{18} is chosen from linear and branched, saturated and unsaturated, C_1-C_6 hydrocarbon-based groups.

31. (Original) A nanoemulsion according to claim 30, wherein said aromatic groups are chosen from aryl and alkylaryl groups.

32. (Original) A nanoemulsion according to claim 30, wherein said hetero atoms are chosen from oxygen, nitrogen, and sulfur.

33. (Original) A nanoemulsion according to claim 30, wherein said aliphatic groups are chosen from alkyl, alkoxy, polyoxy(C_2-C_6)alkylene, alkylamide, (C_{12}-C_{22})alkylamido(C_2-C_6)alkyl, (C_{12}-C_{22})alkylacetate, and hydroxyalkyl groups comprising from 1 to 30 carbon atoms.

34. (Original) A nanoemulsion according to claim 30, wherein said alkenyl and alkyl groups comprising from 8 to 30 carbon atoms are chosen from groups derived from tallow fatty acid.

35. (Original) A nanoemulsion according to claim 30, wherein said diquaternary ammonium salts of formula (VI) comprise propane tallow diammonium dichloride.

36. (Original) A nanoemulsion according to claim 30, wherein said R_{15} alkyl groups are chosen from linear and branched alkyl groups.

37. (Original) A nanoemulsion according to claim 36, wherein said R_{15} alkyl groups are chosen from linear alkyl groups.

38. (Original) A nanoemulsion according to claim 37, wherein said R_{15} alkyl groups are chosen from methyl, ethyl, hydroxyethyl and dihydroxypropyl groups.

39. (Original) A nanoemulsion according to claim 38, wherein said R_{15} alkyl groups are chosen from methyl and ethyl groups.

40. (Original) A nanoemulsion according to claim 30, wherein said sum of $x + y + z$ ranges from 1 to 10.

41. (Original) A nanoemulsion according to claim 30, wherein when said R_{16} is chosen from linear and branched, saturated and unsaturated, C_1-C_{22} hydrocarbon-based groups, R_{16} is chosen from hydrocarbon-based groups comprising from 12 to 22 carbon atoms, and hydrocarbon-based groups comprising from 1 to 3 carbon atoms.

42. (Original) A nanoemulsion according to claim 30, wherein when said R_{18} is chosen from linear and branched, saturated and unsaturated, C_1-C_6 hydrocarbon-based groups, R_{18} comprises from 1 to 3 carbon atoms.

43. (Original) A nanoemulsion according to claim 42, wherein said R_{18} comprises from 1 to 3 carbon atoms.

44. (Original) A nanoemulsion according to claim 30, wherein said R_{17}, R_{19} and R_{21}, which may be identical or different, are each chosen from linear and branched, saturated and unsaturated C_{11}-C_{21} hydrocarbon-based groups.

45. (Original) A nanoemulsion according to claim 44, wherein said R_{17}, R_{19} and R_{21}, which may be identical or different, are each chosen from linear and branched, saturated and unsaturated, C_{11}-C_{21} alkyl and alkenyl groups.

46. (Original) A nanoemulsion according to claim 30, wherein said x and z, which may be identical or different, are each chosen from 0 or 1.

47. (Original) A nanoemulsion according to claim 30, wherein said y is equal to 1.

48. (Original) A nanoemulsion according to claim 30, wherein said n, p and r, which may be identical or different, are each chosen from 2 and 3.

49. (Original) A nanoemulsion according to claim 48, wherein said n, p and r, which may be identical or different, are each equal to 2.

50. (Original) A nanoemulsion according to claim 30, wherein said anion is chosen from halides and alkyl sulfates.

51. (Original) A nanoemulsion according to claim 50, wherein said halides are chosen from chloride, bromide, and iodide.

52. (Original) A nanoemulsion according to claim 50, wherein said alkyl sulfates are chosen from methyl sulfate.

53. (Original) A nanoemulsion according to claim 30, wherein said anion is chosen from methanesulfonate, phosphate, nitrate, and tosylate.

54. (Original) A nanoemulsion according to claim 30, wherein said anion is chosen from anions derived from organic acids.

55. (Original) A nanoemulsion according to claim 30, wherein said cationic amphiphilic lipids of formula (IV) are chosen from tetraalkyammonium chlorides.

56. (Original) A nanoemulsion according to claim 55, wherein said tetraalkyammonium chlorides are chosen from dialkyldimethylammonium chlorides, and alkyltrimethylammonium chlorides, wherein said alkyl portion comprises from 12 to 22 carbon atoms.

57. (Original) A nanoemulsion according to claim 30, wherein said cationic amphiphilic lipids of formula (IV) are chosen from behenyltrimethylammonium chloride, distearyldimethylammonium chloride, cetyltrimethylammonium chloride, benzyldimethylstearylammonium chloride and stearamidopropyldimethyl(myristyl acetate)ammonium chloride.

58. (Original) A nanoemulsion according to claim 30, wherein said cationic amphiphilic lipids of formula (IV) are chosen from behenyltrimethylammonium salts and stearamidopropyldimethyl(myristyl acetate)ammonium salts.

59. (Original) A nanoemulsion according to claim 1, wherein said at least one oil is chosen from plant oils, animal oils, synthetic oils, mineral oils, halogenated oils, esters of a mineral acid and of an alcohol, liquid carboxylic acid esters and silicones.

60. (Original) A nanoemulsion according to claim 1, wherein said at least one oil is present in an amount ranging from 2% to 40% by weight relative to the total weight of the nanoemulsion.

61. (Original) A nanoemulsion according to claim 60, wherein said at least one oil is present in an amount ranging from 4% to 30% by weight relative to the total weight of the nanoemulsion.

62. (Original) A nanoemulsion according to claim 1 further comprising at least one active agent chosen from water-soluble, water-dispersible, and liposoluble cosmetic active agents and water-soluble, water-dispersible, and liposoluble dermopharmaceutical active agents.

63. (Canceled)

64. (Previously Presented) An oil-in-water nanoemulsion comprising oil globules with an average size of less than 150nm comprising at least one oil, at least one amphiphilc lipid, and at least one cationic polymer comprising at least one hydrophobic block and at least one hydrophilic block, said nanoemulsion further comprising at least one aminosilicone.

65. (Original) A nanoemulsion according to claim 64, wherein said at least one aminosilicone is present in an amount ranging from 0.05% to 10% by weight relative to the total weight of the nanoemulsion.

66. (Original) A nanoemulsion according to claim 65, wherein said at least one aminosilicone is present in an amount ranging from 0.1% to 5% by weight relative to the total weight of the nanoemulsion.

67. (Original) A nanoemulsion according to claim 66, wherein said at least one aminosilicone is present in an amount ranging from 0.3% to 3% by weight relative to the total weight of the nanoemulsion.

68. (Previously Presented) A composition for topical use chosen from cosmetic compositions and dermopharmaceutical compositions, wherein said composition for topical use comprises a nanoemulsion comprising oil globules with an average size of less than 150nm comprising at least one oil, at least one amphiphilc lipid, and at least one cationic polymer comprising at least one hydrophobic block and at least one hydrophilic block, wherein said nanoemulsion has a turbidity ranging from 60 NTU to 600 NTU.

69. (Previously Presented) A composition for caring for a keratin material chosen from body skin, facial skin, mucous membranes, the scalp, the hair, the nails, the

eyelashes, and the eyebrows comprising a nanoemulsion comprising oil globules with an average size of less than 150nm comprising at least one oil, at least one amphiphilc lipid, and at least one cationic polymer comprising at least one hydrophobic block and at least one hydrophilic block, wherein said nanoemulsion has a turbidity ranging from 60 NTU to 600 NTU.

70. (Previously Presented) A composition for washing a keratin material chosen from body skin, facial skin, mucous membranes, the scalp, the hair, the nails, the eyelashes, and the eyebrows comprising a nanoemulsion comprising oil globules with an average size of less than 150nm comprising at least one oil, at least one amphiphilc lipid, and at least one cationic polymer comprising at least one hydrophobic block and at least one hydrophilic block, wherein said nanoemulsion has a turbidity ranging from 60 NTU to 600 NTU.

71. (Previously Presented) A cosmetic make up composition for a keratin material chosen from body skin, facial skin, mucous membranes, the scalp, the hair, the nails, the eyelashes, and the eyebrows comprising a nanoemulsion comprising oil globules with an average size of less than 150nm comprising at least one oil, at least one amphiphilc lipid, and at least one cationic polymer comprising at least one hydrophobic block and at least one hydrophilic block, wherein said nanoemulsion has a turbidity ranging from 60 NTU to 600 NTU.

72. (Previously Presented) A cosmetic make-up-removing composition for a keratin material chosen from body skin, facial skin, mucous membranes, the scalp, the hair, the nails, the eyelashes, and the eyebrows comprising a nanoemulsion comprising oil globules with an average size of less than 150nm comprising at least one oil, at least

one amphiphilc lipid, and at least one cationic polymer comprising at least one hydrophobic block and at least one hydrophilic block, wherein said nanoemulsion has a turbidity ranging from 60 NTU to 600 NTU.

73. (Previously Presented) A non-therapeutic care process for a keratin material comprising applying to said keratin material a nanoemulsion comprising oil globules with an average size of less than 150nm and comprising at least one oil, at least one amphiphilc lipid, and at least one cationic polymer comprising at least one hydrophobic block and at least one hydrophilic block, wherein said nanoemulsion has a turbidity ranging from 60 NTU to 600 NTU.

74. (Original) A process according to claim 73, wherein said keratin material is chosen from the skin, the hair, the eyelashes, the eyebrows, the nails, mucous membranes and the scalp.

75. (Previously Presented) A non-therapeutic care process for a keratin material comprising applying to said keratin material a composition for topical use chosen from cosmetic compositions and dermopharmaceutical compositions, wherein said composition for topical use comprises a nanoemulsion comprising oil globules with an average size of less than 150nm and comprising at least one oil, at least one amphiphilc lipid, and at least one cationic polymer comprising at least one hydrophobic block and at least one hydrophilic block, wherein said nanoemulsion has a turbidity ranging from 60 NTU to 600 NTU.

76. (Original) A process according to claim 75, wherein said keratin material is chosen from the skin, the hair, the eyelashes, the eyebrows, the nails, mucous membranes and the scalp.

77. (Previously Presented) A process for thickening oil-in-water nanoemulsions comprising including at least one cationic polymer comprising at least one hydrophobic block and at least one hydrophilic block in said nanoemulsions comprising oil globules with an average size of less than 150nm and comprising at least one oil and at least one amphiphilc lipid, wherein said nanoemulsion has a turbidity ranging from 60 NTU to 600 NTU.

78. (Previously Presented) An oil-in-water nanoemulsion comprising oil globules with an average size of less than 150nm comprising at least one oily phase, at least one amphiphilc lipid, and at least one nonionic polymer comprising at least one hydrophobic block and at least one hydrophilic block, wherein said nanoemulsion has a turbidity ranging from 60 NTU to 600 NTU.

79. (Original) A nanoemulsion according to claim 78, wherein said at least one oily phase and said at least one amphiphilic lipid are present in amounts wherein the weight ratio of the amount of said at least one oily phase to the amount of said at least one amphiphilic lipid ranges from 1:1 to 10:1.

80. (Original) A nanoemulsion according to claim 79, wherein said at least one oily phase and said at least one amphiphilic lipid are present in amounts wherein the weight ratio of the amount of said at least one oily phase to the amount of said at least one amphiphilic lipid ranges from 1.2:1 to 10:1.

81. (Original) A nanoemulsion according to claim 80, wherein said at least one oily phase and said at least one amphiphilic lipid are present in amounts wherein the weight ratio of the amount of said at least one oily phase to the amount of said at least one amphiphilic lipid ranges from 1.5:1 to 6:1.

82. (Original) A nanoemulsion according to claim 81, wherein said at least one oily phase and said at least one amphiphilic lipid are present in amounts wherein the weight ratio of the amount of said at least one oily phase to the amount of said at least one amphiphilic lipid ranges from 2:1 to 5:1.

83. (Original) A nanoemulsion according to claim 54, wherein said anions derived from organic acids are chosen from acetate and lactate.

Evidence Appendix to Appeal Brief Under Rule 41.37(c)(1)(ix)

There is no evidence being relied upon by Appellants in this appeal.

Related Proceedings Appendix to Appeal Brief Under Rule 41.37(c)(1)(x)

There are currently no other appeals or interferences, of which Appellants, Appellants' legal representative, or assignee are aware, that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.